

(approved August 19, 2004)

**BOARD OF BEHAVIORAL SCIENCES
FULL BOARD
MEETING MINUTES**

MAY 20, 2004

**HYATT REGENCY ISLANDIA
1441 QUIVIRA ROAD
SAN DIEGO, CA**

MEMBERS PRESENT

Mark Burdick, LEP Member, Board Chair
Catherine Kay, Public Member, Vice Chair
Robert Gerst, Public Member
Victor Law, Public Member
Peter Manoleas, LCSW Member
Glynis Morrow, Public Member
Jane Nathanson, MFT Member
Howard Stein, Public Member

MEMBERS ABSENT

Karen Pines, MFT Member
Susan Ulevitch, LCSW Member

STAFF PRESENT

Sherry Mehl, Executive Officer
Denise Johnson, Assistant Executive Officer
Kristy Schieldge, Legal Counsel
Julie McAuliffe, Administrative Analyst
Meuy Saephan, Administrative Technician

GUEST LIST ON FILE

The meeting was called to order at approximately 11:10 a.m.

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

Ms. McAuliffe called the roll and a quorum was established.

**2. PRESENTATION ON THE MARRIAGE AND FAMILY THERAPIST AND
LICENSED CLINICAL SOCIAL WORKER CLINICAL VIGNETTE WRITTEN
EXAMINATION**

Dr. Tracy Ferrel, Chief of the Office of Examination Resources (OER), provided the Board with

an overview on the history of the written clinical vignette examinations implementation, the current status of the examinations, and future actions.

Dr. Ferrel stated that as a result of the Board's November 13, 2003 decision to replace the oral examinations with the written clinical vignette examinations, planning meetings were scheduled and conducted during November and December 2003 to fine tune the parameters of the examinations, establish goals and timeframes, and identify the imperative information to communicate to candidates. A series of examination development workshops were held in November through mid February with Subject Matter Experts for item writing, review, construction, and passing scores of the examinations.

The examinations were transmitted to the examination administering vendor Experior Testing at the end of February for uploading to the computers. Quality control testing occurred and examination testing was finalized in March. The first eligible candidates were identified in March. Concurrently, Candidate Handbooks, acknowledgement letters, and pass/fail notices were all revised. Additionally, all Applicant Tracking System modifications were identified and completed by the Office of Information Services (OIS) within the Department of Consumer Affairs (DCA).

The written clinical vignette examinations administration began on April 1, 2004. A statistical analysis of the examinations occurred in early May and the examinations are performing satisfactorily in terms of general statistics such as difficulty and discrimination indices, acceptable range of item difficulty, and evidence that items within the examination are differentiating between high and low scorers. Statistics were prepared based on the initial number of candidates to meet analysis requirements and are expected to fluctuate as candidate numbers increase. As of this Board meeting, approximately 200 candidates had taken the Licensed Clinical Social Worker (LCSW) examinations and approximately 60% had passed. Approximately 300 candidates had participated in the Marriage and Family Therapist (MFT) examination and approximately 50% had passed.

The OER and the Board will continue to closely monitor the examinations performance and candidate comments as well as improve the identifying linkage between the vignette and the questions, address the ordering of the vignette and the questions, continue to hold examination development workshops, utilize feedback from Subject Matter Experts and item analysis data to improve items, foresee adding non scorable pretest questions, and implement a new form of the examination for LCSWs in August and for MFTs in September.

Dr. Ferrel stated that her office was very pleased with the outcome of the process considering the condensed timeframe. She indicated that the efforts from Board staff, OER staff, OIS staff, and Subject Matter Experts greatly helped with the transition to the new examination format.

Ms. Mehl stated that the professional manner of OER and staff was outstanding and that the examination performing at the level it is performing is a tribute to Dr. Ferrel and her staff.

Ms. Kay asked that a letter be sent to the Director of the DCA on behalf of the Board for all Dr. Ferrel's great work.

A complete cycle of statistics should be available at the August Board meeting.

Jan Lee Wong, Executive Director of the National Association of Social workers, commended the Board, the OER, and staff for the tremendous job in implementing the new examination.

Dr. Burdick thanked Dr. Ferrel for her presentation.

3. DISCUSSION REGARDING THE BOARD'S AUTHORITY TO DISCIPLINE FOR DUAL RELATIONSHIPS

Mr. Gerst had asked that this issue be discussed and clarified his request to the Board. He provided some comparison of the enforcement statistics and the sections of statute that authorize the Board to discipline. Within these statutes there are specific violations however, dual relationships are not listed. The beginning of the statutes do indicate that this is not a complete list of all violations and the Board does have the authority to discipline for others not listed.

Mr. Gerst asked the Board if they felt that general unprofessional conduct, gross negligence, or incompetence was sufficient to encompass dual relationships.

Dr. Burdick stated that he thought that this issue is not specific to our Board alone and asked for clarification from legal counsel.

Kristy Schieldge, Legal Counsel for the Board, distinguished between a dual relationship and an "unethical" dual relationship. Ms. Schieldge indicated that typically an unethical dual relationship is charged as one of the violations mentioned by Mr. Gerst in addition to the charge of intentionally or recklessly causing physical or emotional harm to the client. An unethical dual relationship is one that is a violation of one of these standards in law and an expert testifies to the specific standard of care in the profession that was violated by this relationship on a case-by-case basis.

Ms. Kay clarified that there were two questions asked. First, procedurally, when there is an allegation of a dual relationship what is the appropriate violation to charge. The second is whether the Board and staff feel there is a need to provide further definition of a dual relationship in statute.

Mr. Gerst indicated that it is a policy question to the Board as to whether they feel that a restrictive definition is needed to clarify that a potential dual relationship is the standard.

Ms. Schieldge stated that if it were restrictive, it would need to be applied to every single case in the specified violations. When left open, an expert can testify as to the standard of care in the specific case.

Ms. Morrow commented that the Board should leave the statute as it and leave it on a case-by-case basis to allow the expert to determine that a potential harm could have taken place.

Mr. Gerst asked for legal guidance regarding how judges look at an expert's testimony and whether a judge requires actual harm.

Ms. Nathanson indicated she felt it is very well stated in the laws and ethical guidelines that there is not to be a dual relationship within a therapeutic setting and the Board should address these issues on a case by case basis.

Mr. Gerst stated that the Board has seen situations when a judge expects to see concrete evidence instead of the potential of harm.

Ms. Schieldge thought that the issue has to do with the submission of sufficient evidence to prove an unethical dual relationship. If an expert makes sure that they testify to the potential for exploitation of the client or the practitioner's judgment being impaired there would not be an issue. The Board must ensure the appropriate evidence has been demonstrated to determine an unethical dual relationship exists.

Mr. Manoleas supported what Ms. Morrow and Ms. Nathanson had said and the Board should continue to maintain their flexibility.

Mary Riemersma, Executive Director of the California Association of Marriage and Family Therapists, indicated that from a historical perspective, in the 1980's the Board held hearings on the issue of including dual relationships in the law. At that time, the Board did not decide to include dual relationships, as some are unavoidable and impossible for those who may live in small towns who's client's may work at the bank, grocery store, etc. The retention of handling dual relationships on a case-by-case basis was the decision that came out of the hearings.

Jan Lee Wong, Executive Director of the National Association of Social Workers, stated that in addition to viewing this issue from a legal standpoint, it is critical to also view it from the professional practice standard of care. The professional code of ethics is very specific as to avoiding dual relationships.

Mr. Gerst stated that he was comfortable leaving the statute as it currently reads.

Based on the discussion, the Board decided to not amend the statute and continue to retain the flexibility on determining a dual relationship on a case-by-case basis.

The Board recessed at 12:05 p.m.

The Board reconvened at approximately 1:40 p.m. and held a regulation hearing.

4. REVIEW AND DISCUSSION REGARDING POSSIBLE AMENDMENTS TO THE LICENSED EDUCATIONAL PSYCHOLOGIST LICENSING REQUIREMENTS

Dr. Burdick stated that this item had been discussed at prior meetings and, as the Board approaches Sunset Review, this would be an appropriate time to amend the law to provide more clarity as to the licensure requirements.

Ms. Mehl had performed extensive research on this issue. Although the law had been amended in the past, the Board has never reviewed the licensing requirements as a whole, in terms of education and experience requirements. The laws are currently based on the school credentialing process and experience after the credential is obtained. The laws that relate to school psychology have been amended throughout the years and our law requires amendments in order to maintain consistency since we base the ability to obtain an educational psychology license on the fact that an individual has been a credentialed school psychologist for two years prior to applying for licensure. Ms. Mehl and Board staff met and drafted amendments to the licensure requirements as a starting point for the Board. Clarification was still needed regarding the one

year of additional supervised experience. The law does not delineate where and how the experience can be gained and who is to provide the supervision.

Ms. Mehl suggested that an ad hoc committee be formed to make further decisions as to changes needed. Ms. Mehl stated that staff has compiled a voluminous amount of information to provide reference to the committee. Another issue that needs to be addressed is the determination if there is a need for exempt settings to allow persons to perform services without holding a license. This has been an issue of argument in the past from others such as educational therapists who do perform some of the services identified in the scope of practice and are not appropriately trained to perform these services. Another important issue that needs to be determined is who can provide a diagnosis and what types of diagnosis an educational psychologist performs.

At Ms. Morrow's suggestion, the Education Committee will take this issue and schedule additional meetings specific to this issue in the future. Staff will attempt to identify interested stakeholders and add them to the listing to receive agendas for these meetings.

At the meeting early in the day, the Education Committee had expressed an interest in beginning to again meet with schools to maintain communication. Dr. Burdick suggested that the Education Committee might wish to hold educational psychology meetings in conjunction with these other meetings.

The meeting adjourned at approximately 2:00 p.m.

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The meeting was called to order at approximately 9:14 a.m.

Ms. Nathanson joined the meeting at approximately 9:30 a.m.

1. APPROVAL OF FEBRUARY 19, 2004 MINUTES

CATHERINE KAY MOVED, GLYNIS MORROW SECONDED, AND THE BOARD CONCURRED TO APPROVE THE FEBRUARY 19, 2004 MINUTES.

2. APPROVAL OF FEBRUARY 20, 2004 MINUTES

GLYNIS MORROW MOVED, HOWARD STEIN SECONDED, AND THE BOARD CONCURRED TO APPROVE THE FEBRUARY 20, 2004 MINUTES. Catherine Kay and Karen Pines abstained.

3. APPROVAL OF APRIL 15, 2004 MINUTES

ROBERT GERST MOVED, GLYNIS MORROW SECONDED, AND THE BOARD CONCURRED TO APPROVE THE APRIL 15, 2004 MINUTES.

4. CHAIRPERSON'S REPORT

Dr. Burdick stated that he is enjoying his new role as Board chair and indicated that Board members are welcome to contact him with any questions.

5. EXECUTIVE OFFICER'S REPORT

a. Budget Update

The current budget materials were included in the meeting materials. The Board is well within their budget. Tighter budget lines include personnel services due to the required 12% salary savings. Savings from not administering the second oral examination in fiscal year 2003/2004 were reflected in the proctor's costs.

Budget items are set and are unable to be moved. In order to change any stand-alone item amounts, the Board must pursue a Budget Change Proposal (BCP). The Enforcement budget is over budgeted to be used if the Board has an extraordinarily expensive case. Also, since the Board no longer administers an oral examination, staff may ask the Department of Finance for a reduction for the examination line item. Ms. Mehl indicated that she did not see the need for a personnel increase in the future unless various staff retires and replacements are needed. Mr. Manoleas asked about cost recovery payments. Ms. Mehl explained that these payments are automatically deposited into the Board's fund balance and cannot be utilized unless a BCP is pursued. Mr. Manoleas asked staff to provide the Board with a report on the amount of cost recovery accumulated thus far.

Ms. Morrow commended Ms. Mehl for her leadership ability and her ways of continuing to run the Board with less money.

b. Miscellaneous Matters

1. Website Statistics

The website continues to be a great tool. Staff has implemented a service in which documents are available on disc and a person can call or e-mail and request this free service.

2. Review of Draft Sunset Review Report

Ms. Mehl stated that the report provides the fact responses to the questions. The sunset process within the Legislature has slowed down dramatically. The Board's report is approximately 80% complete. Ms. Mehl asked that the Board review the document and contact her with any questions or changes. The completed report will be submitted to the Board at the August meeting for final approval.

Ms. Mehl then informed the Board on the status of the implementation of the Mental Health Service Provider Education Fund. In 2004, the Board was mandated to collect an additional ten dollars with license renewals to assist in funding this program. She has contacted the Department of Mental Health (DMH) and was informed that DMH has requested a BCP to staff and

implement the program. DMH will be beginning the regulatory process and will contact Board staff to assist in determining appropriate council members and representatives from the Board.

6. REVIEW AND POSSIBLE APPROVAL OF AMENDMENTS TO DISCIPLINARY GUIDELINES

Ms. Kay stated that the Ad Hoc Committee had reviewed the final amendments to the document at the February meeting, approved those amendments, and has directed that the guidelines be brought forward to the full Board for approval and direction to staff to begin the regulatory process. Ms. Kay commended staff and legal counsel for their work on compiling all of the changes. The guidelines were amended to provide a more user friendly document and to further explain the Board's views on certain disciplinary situations.

Ms. Kay made one last suggestion, which was to amend the probation period for General Unprofessional Conduct from five years to three to five years.

HOWARD STEIN MOVED, KAREN PINES SECONDED, AND THE BOARD CONCURRED TO ADOPT THE PROPOSED CHANGE SUGGESTED BY MS. KAY.

CATHERINE KAY MOVED, GLYNIS MORROW SECONDED, AND THE BOARD CONCURRED TO DIRECT STAFF TO PREPARE THE INITIAL STATEMENT OF REASONS AND INITIATE THE RULEMAKING PROCESS, TAKE ALL OTHER STEPS NECESSARY TO PROCEED WITH THE FORMAL RULEMAKING PROCESS, AUTHORIZE THE EXECUTIVE OFFICER TO MAKE ANY NONSUBSTANTIVE CHANGES TO THE PROPOSED REGULATIONS AND, IF NO ADVERSE COMMENTS ARE RECEIVED, TO ADOPT THE PROPOSED REGULATIONS AS AMENDED.

Ms. Pines thanked and commended the Ad Hoc Committee for their job on the Disciplinary Guidelines.

7. REVIEW AND POSSIBLE APPROVAL OF AMENDMENTS TO THE PUBLIC DISCLOSURE POLICY

At the February meeting the Board had discussed publicizing citation and fine records on its website and had asked staff to bring information back regarding how this would be disclosed to the public. Staff had provided the Board with a draft Public Disclosure Policy that included direction to staff and the public regarding the disclosure of citation and fines. The Board requested that the word "minor" be taken out of the proposed change. Ms. Schieldge explained that Business and Professions Code Section 125.9 indicates that payment of the fine is to be represented as satisfactory resolution of the matter for purposes of public disclosure. After further discussion, the Board determined that they would like the additional language to the policy to read, "If an individual has been issued a final determination of a citation for a violation of the law by the Board within the last five years. This is not considered disciplinary action".

Mr. Gerst asked how the history of a citation and fine would be used for an individual who had been cited several times and the Board then began the disciplinary process. Ms. Mehl explained that alerting the staff to take action would be initiated but she then indicated that within the history with the Board, she had never seen a citation and fine come back in a disciplinary violation. If this situation were to happen, staff would look at this very seriously, and take the appropriate measures to begin the disciplinary process. The use of that prior history may not be

able to be used in the subsequent disciplinary process and this would be an issue for the Attorney General to decide. Ms. Schieldge stated that she thought it would be inappropriate to have this as part of a subsequent disciplinary action because it would be like punishing the licensee twice, and since they have satisfactorily resolved the previous matter by paying the fine, it is not part of an individual's disciplinary record.

Mr. Gerst asked legal counsel to research whether the Attorney General's office has a formal opinion regarding the use of prior citation and fine sanctions in a subsequent disciplinary action process.

ROBERT GERST MOVED, KAREN PINES SECONDED, AND THE BOARD CONCURRED TO ADOPT THE REVISED PUBLIC DISCLOSURE POLICY.

8. REVIEW AND POSSIBLE APPROVAL TO AMEND BUSINESS AND PROFESSIONS CODE SECTIONS 4982.05 AND 4992.31 REGARDING ENFORCEMENT STATUTE OF LIMITATIONS

Ms. Mehl explained that the issue of statute of limitations was discussed at the February meeting and the discussion included the difficulty the Board sometimes encounters regarding the word "discovers". There currently is nothing in statute or regulation that provides a definition of this term. The Medical Board does have regulations that provide a definition and Ms. Mehl provided it to the Board. After review, the Board directed staff to draft similar language for review and approval by the Board.

ROBERT GERST MOVED, CATHERINE KAY SECONDED, AND THE BOARD CONCURRED TO DIRECT STAFF TO DRAFT LANGUAGE TO DEFINE "DISCOVERS".

This draft will come back to the Board at the August or November meeting.

9. REVIEW AND POSSIBLE APPROVAL OF 2004 STRATEGIC PLAN

The Board discussed any changes to the Strategic Plan. The Examination Committee had one addition. Ms. McAuliffe read the suggested addition to the Examination Committee objectives. Ms. Kay suggested that "but not be limited to" be added to the suggested additions. The objective now reads, "continue to update the BBS library to include, but not be limited to, the latest empirical studies which predict harmful practice".

Mr. Manoleas asked if an addition could be made to the Consumer Services/Consumer Protection Committee's objective eight to reflect the responsiveness of the Board in relation to public participation at meetings. After discussion, the Board decided to add language to objective eight to read, "to encourage public participation and public responsiveness at public hearings and workshops as needed to facilitate input on specific issues".

Mr. Manoleas asked that the Board survey applicants who have completed their required experience and have not began the examination process. Ms. Mehl thought that this was very appropriate and may assist the Board in determining if legislation or regulations changes are needed. She then suggested that this be assigned to the Licensing Committee for the development of the consumer survey. Ms. Mehl then commented that surveys in the past have resulted in very positive outcomes.

KAREN PINES MOVED, HOWARD STEIN SECONDED, AND THE BOARD CONCURRED TO ADOPT THE 2004 STRATEGIC PLAN AS AMENDED.

10. 2004 LEGISLATION OF INTEREST TO THE BOARD

Ms. Mehl provided the Board with an overview of proposed legislation that would impact the Board. Senate Bill 1853, legislation that would further define the scope of practice of a Licensed Clinical Social Worker, has been an issue of scrutiny within the legislative hearings with opposition from the California Medical Association and the American Psychological Association. They have proposed amendments that would be a serious threat to the profession of social work. Ms. Mehl has written letters to the author's office to assist in further defining the clinical skills performed by LCSWs. Ms. Mehl will continue to assist the professional associations and the author as needed.

Mary Riemersma, Executive Director of the California Association of Marriage and Family Therapists, asked for the Board's support of Assembly Bill 2552, legislation that addresses allowance of alternative supervision when a primary supervisor is either ill or on vacation and would reference specific applications of principles and training required for licensure in the scope of practice.

KAREN PINES MOVED, VICTOR LAW SECONDED, AND THE BOARD CONCURRED TO SUPPORT ASSEMBLY BILL 2552.

11. APPROVE / NOT APPROVE COMMITTEE RECOMMENDATIONS

a. Consumer Services / Consumer Protection Committee

Mr. Gerst provided the Board with an overview of the Committee meeting. The Committee reviewed their Strategic Plan and discussed the enforcement statistics. The Board requested that the percentage of actionable complaints be included in future statistics as well as clarification that this is for informational purposes only. The Committee also requested that a guide be added to explain the language, such as actionable, pending, unactionable, etc., used within the statistics. In addition, the Committee asked that the statistics include citation and fine information. Ms. Mehl again informed the Board that the computer system used by staff may not be able to extract the kind of statistics requested. She also mentioned that the enforcement statistics are in a format that historically had been requested by prior Board members, therefore she asked the Board to notify her if they would like to see statistics in a different format.

CATHERINE KAY MOVED, VICTOR LAW SECONDED, AND THE BOARD CONCURRED TO APPROVE THE COMMITTEE RECOMMENDATIONS.

b. Examination Committee

Ms. Mehl provided the Board with an overview of the meeting. The Committee approved their minutes and their Strategic Plan.

c. Licensing Committee

Ms. Kay provided an overview of the Committee meeting. The Committee approved their minutes, reviewed and approved their Strategic Plan, and briefly discussed the required

continuing requirements. Ms. Ulevitch had requested this discussion and review and, due to her absence, the discussion was postponed to the August meeting.

Ms. Mehl provided an overview of the auditing process of licensees and continuing education providers.

Ms. Pines announced that she would not be attending the August meeting.

d. Education Committee

Dr. Burdick provided an overview of the Committee meeting. The Committee reviewed and approved their Strategic Plan and discussed a proposal submitted to the Board, which asked that the Board consider accepting non integrated degrees for MFT licensure. The Committee directed staff to compile a survey for schools to determine if this is appropriate and if the schools can and currently do this within their degree programs. The Committee also expressed their interest in beginning to meet schools throughout the state.

GLYNIS MORROW MOVED, VICTOR LAW SECONDED, AND THE BOARD CONCURRED TO APPROVE THE COMMITTEE RECOMMENDATIONS.

e. Ad Hoc Disciplinary Guidelines Committee

Ms. Kay indicated that the Ad Hoc Committee approved their minutes and announced that their work was complete and the Committee would be dissolved. Ms. Mehl again commended the Committee on their work on modifying the Disciplinary Guidelines and expressed that the document will be used as a model for other boards.

12. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

Kelly Kay, creator of the Continuing Education Directory on the Internet, informed the Board of the services provided by this site and provided the Board with literature about the Directory. She then inquired about the possibility of an affiliation with the Board to link from our website to the Directory and to include information in our Newsletter.

The meeting adjourned at approximately 11:12 a.m.